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February 24, 2004

**BY OVERNIGHT MAIL**

ORIGINAL

Sharla Dillon, Dockets & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re Docket No 03-00634, Lightyear

Dear Ms. Dillon

On February 23, 2004, the Tennessee Regulatory Authority ("Authority") approved the Joint Petition of Lightyear Communications, Inc., Lightyear Telecommunications LLC, and Lightyear Network Solutions, Inc. (collectively, the "Petitioners") in the above-referenced docket. Due to inadvertent error, the directors were mistakenly told during the conference hearing that the Petitioners had not yet provided customer notification regarding the proposed transactions. Based on this misinformation, the Authority made its approval contingent upon modifying and sending a customer notification letter before March 1. However, the Petitioners sent a customer notification letter in January 2004 via bill insert and notified the Authority's staff by telephone. Therefore, for the reasons stated below, Petitioners requests that the Authority approve the Petition without requiring them to resubmit a notification letter to consumers.

Pursuant to a conversations with the Authority's staff, Petitioners attach a copy of the notification letter sent to Lightyear's customers in January 2004 via bill insert as Attachment A. The customer letter was sent after the Petition in the above-referenced docket was filed with the Authority, and is similar to the letter attached to the Petition as Exhibit F. The letter in Attachment A was sent in order to meet other state's requirements for 90 days notice and as part of the FCC's self-certification process.

With respect to the Authority's request to mail a customer notification that includes both an old and a new logo, Lightyear Network Solutions, LLC ("New Lightyear") submits that a new logo will not be created. At the time the Petition was filed, Petitioners thought that a new logo might be created, but New Lightyear has decided to continue to use the logo shown in Attachment A. Petitioners contend that New Lightyear's use of the same logo will only add to

the seamless nature of the transaction. As stated in the Petition, the transaction will be virtually transparent to existing customers, and this is reinforced by using the same logo.

The "freeze" language in paragraph three of the customer notification letter was included to comply with the Federal Communications Commission ("FCC") requirement. Pursuant to conversations with FCC staff, the FCC will not waive the requirement, even if it is not applicable. Thus, the language was included in Lightyear's customer notification letter. However, due to the specific nature of this transaction, no primary interexchange carrier ("PIC") freeze will be uninstalled. Lightyear's customers will not need to request that the "freeze" be over-ridden.

In addition, the Authority may require renotification because the notice contained language in paragraph four that customers may choose another carrier, "subject to any termination restrictions in your contract." The Authority should not focus on the word "termination" in the notification letter because Lightyear's contracts use the standard label "Termination" to identify the sections where a customer may find applicable early cancellation penalties, if applicable. Please see Attachment B for examples of Lightyear contracts that include "termination" provisions. Note specifically that the examples use the label "Termination."

Lastly, Petitioners are concerned that renotifying customers would cause undue and unnecessary customer confusion. Lightyear, and quite possibly the Authority, may receive a number of inquiries that would not occur except for the fact of a second notice. Rather than risk confusing customers at this point, Petitioners ask the Authority to accept the January letter, which was approved by the FCC, without customer renotification.

Moreover, Petitioners request approval of the January letter because it would cause undue additional expense and would be time-consuming and difficult to implement. As stated in the customer notification letter, and as discussed with staff, the entire transaction is scheduled to be completed by March 31 per order of the federal bankruptcy court in the Western District of Kentucky. If the Authority denies Petitioners' request, then Petitioners would not be able to provide renotification before the transaction is completed. Thus, if the Authority requires renotification, Petitioners request that the Authority waive the 30 day notice requirement in Rule 1220-4-2- 56(2)(d)(2).

Therefore, Petitioners request approval of the letter already sent to customers in January as being sufficient notice to Tennessee customers of the impending transfer. If the Authority requires renotification, then Petitioners respectfully request waiver of Rule 1220-4-2- 56(2)(d)(2).

Sharla Dillon, Dockets & Records Manager  
February 24, 2004  
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Petitioners submit an original and thirteen (13) copies of this letter for filing. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, stamped envelope enclosed herein. Should you have any questions, please do not hesitate to contact Danielle Burt at (202) 295-8439.

Respectfully submitted,

A handwritten signature in black ink that reads "Danielle Burt". The signature is written in a cursive, flowing style.

Douglas D. Orvis II  
Danielle C. Burt

Enclosures

cc Kim Beals  
W. Brent Rice  
Linda Hunt

**ATTACHMENT A**

Lightyear's Customer Notification Letter  
Sent January 2004



Dear Valued Customer

The last few years have been a bumpy ride for the telecommunications industry. At Lightyear, we're proud to say that we're survivors. Lightyear Communications, Inc. ("Lightyear") is officially emerging from bankruptcy with the transfer of substantially all of its assets to Lightyear Network Solutions, LLC. ("New Lightyear"). New Lightyear will automatically become your telecommunications provider on or about March 31, 2004. The actual effective date of the transfer will be on a customer by customer basis and will depend on when we receive the appropriate state and federal regulatory approvals.

The existing management and employees of Lightyear Communications, Inc. will continue to serve you when the name changes to Lightyear Network Solutions, LLC. We're excited about this change and we hope you will be, too. **Please rest assured that the transaction will not affect the services you currently receive and that you will continue to receive services with the same rates, features, terms and conditions as the service you currently enjoy. You will continue to receive top quality services with performance which meets or exceeds that of the services you currently receive.**

From our customer's perspective, we anticipate this change to be truly seamless. However, it is important that you be aware of the following information. Many of our customers have instituted a "freeze" on their existing telephone lines to prevent unauthorized transfer to another long-distance carrier. That freeze may be over-ridden for purposes of this transaction, and may need to be reinstated by you after the transfer is complete.

You may, of course, choose another carrier for your telephone service, subject to any termination restrictions in your contract. Customers who wish to choose another telephone provider will need to contact that carrier prior to March 10, 2004. Please note that if you are a customer of former Lightyear on the date of the transfer and you have not informed Lightyear that you have made arrangements on your own to switch to a telephone company other than New Lightyear, your account will automatically be transferred and your contract assigned to New Lightyear, even if you have previously arranged for a preferred carrier freeze through your local phone company.

If you live in the state of Tennessee, we are required to give you 30 days notice if there will be any rate increases or major product changes to your account within 90 days of our corporate changeover. At this time, we do not anticipate any major changes to our current product lineup, as our vendors are working closely with us to make this change as simple as possible. The transaction has been structured such that customers should not be charged any carrier-change charges levied by your local telephone company. If, however, such a charge does appear on the bill from your local telephone company as a result of this transfer of service to New Lightyear, please call Lightyear's customer service department toll-free 866-946-2222, and they will reimburse you or credit your account accordingly.

Any questions you may have regarding your current services can be addressed by calling Lightyear's customer service department toll-free at 866-946-2222. You may also contact Lightyear's customer service department to learn more about New Lightyear and its service offerings prior to the transfer by calling the same toll free number.

We look forward to continuing to provide you with quality service for many years to come. In the meantime, if you have specific questions about this notice, please contact us at 866-946-2222, or if you reside in Hawaii, you may also contact the Hawaii Public Service Commission at 465 S. King Street, First Floor, Honolulu, Hawaii 96813 (Telephone) 808-586-2020.

Sincerely,

**Lightyear Network Solutions, LLC**

## **ATTACHMENT B**

Lightyear Contracts

### STEP 1: LIGHTYEARHOME CALLING PLANS

#### ☐ \$49.99/Mo. Opportunity Plan\*

- Local and Long Distance Phone Service
- Unlimited Local Calls
- Unlimited 1+Long Distance Domestic Calls (International calls billed separately Rates vary)
- Call Forwarding Variable
- Call Return
- Call Waiting Deluxe
- Deluxe Caller ID
- Repeat Dialing
- Three Way Calling

#### ☐ \$29.99/Mo Starter Plan\*

Includes all Opportunity Plan features except Unlimited Long Distance and Voicemail Select Long Distance Rate Plan

Interstate Rate Plan **START49**

Intrastate Rate Plan **START**

International Rate Plan

☐ You may currently have some features that will not be provided with your Lightyear local service. Check here if you simply want to maintain all your current local services and features when you switch your service to Lightyear. Prices for available features are listed below.

*Note "Per Use" events such as directory assistance, "star" (\*) features, taxes and fees are excluded from both monthly calling plans*

### STEP 2: SERVICE AND FEATURES

Customers have the option of choosing other local features or services at an additional monthly fee including

#### Services (Prices are per-month):

- ☐ Basic Voicemail (\$6.95)
- ☐ Second Line (\$24.99)
- ☐ New Line/Move Installation Charge (\$99.99)

#### Features (Prices are per-month)\*

- ☐ Additional Listing (\$2.00)
- ☐ Call Block (\$4.00)
- ☐ Call Forward Busy (\$1.00)
- ☐ Call Forward No Answer (\$1.00)
- ☐ Call Selector (\$4.00)
- ☐ Call Trace (\$4.00)
- ☐ Distinctive Ring (\$2.95)
- ☐ Non-published Listing (\$2.50)
- ☐ Non-listed Listing (\$1.75)
- ☐ Preferred Call Forwarding (\$4.00)
- ☐ Privacy ID (\$5.95)
- ☐ Speed Dial 30 (\$4.00)
- ☐ Speed Dial 8 (\$3.00)
- ☐ Wire Protection (\$4.95)

\* Excludes taxes and regulatory fees

### STEP 3: BILLING ADDRESS

(List name and address as it appears on your current phone bill)

First Name MI Last Name

Street Address / PO Box Ste /Apt #

City State Zip

Contact Phone Work Phone

e-mail Address

Social Security Number Date of Birth

### STEP 4: ACCOUNT INFORMATION

Primary Phone Number

Secondary Phone Number

Third Phone Number

Current Local Service Provider

Special Instructions ☐ Check only to exclude IntraLATA Service

☐ Check if you are requesting new service and had no prior service at location

### STEP 5: SIGN TERMS AND CONDITIONS

The undersigned hereby agrees to the terms and conditions of this agreement for new service, including those listed on the reverse. I acknowledge that this agreement for new service is subject to approval by Lightyear Communications, Inc. ("Lightyear"). I hereby authorize Lightyear to verify all listed information for credit purposes. I understand that all services I select pursuant to this agreement shall be provided by Lightyear.

I hereby appoint Lightyear as my primary long distance and local carrier for equal access service including interstate, intrastate and international service as well as intralata, unless I have indicated otherwise in the "special instructions" section of this agreement for service. I appoint Lightyear to act as my agent in order to effectuate the charge(s) and authorize it to handle on my behalf all arrangements, including ordering, changing and/or maintaining my service. I understand that my local telephone company may assess me a charge for any change in service. I understand that only one long distance carrier may be designated as my primary interstate carrier for any one telephone number, but that I may have the ability (depending on my location) to select separate long distance carrier for other types of service.

I represent that I am the subscriber for the telephone number(s) listed herein and/or have the authority to change local and long distance carriers. This agreement and the services provided hereunder are subject to Lightyear tariffs in effect from time to time. Some restrictions may apply. For Lightyear Customer Service, call 1-877-295-4200.

Authorized Customer Signature Date

Print Customer Name

## TERMS AND CONDITIONS

Customer agrees to pay for, and Lightyear Communications, Inc ("Lightyear") agrees to provide, local and long distance service ("Services") for residential purposes only pursuant to the following

**1 BILLING** Services are provided and invoices are issued on a monthly basis. Invoices shall be payable in full on the last day of the month in which the invoice is rendered, except for amounts that are agreed to by Lightyear as valid disputes of Customer. Customer is responsible for paying entire billing invoice excluding disputed charges that have been identified in writing to Lightyear.

Customer shall notify Lightyear within 15 days of receipt of billing invoice of any dispute with regard to the invoice, or said invoice shall be deemed to be correct and binding.

Interest on all unpaid balance at the lesser of 1 5% per month or the highest lawful rate may be applied to the outstanding balance until paid in full and current. In addition, invoices not paid by the due date will not be eligible for any volume and term discounts, which may otherwise be available, and Customer may be disconnected.

**2 SERVICES AND RATES** Lightyear may revise the rates for services from time to time without prior notice to reflect changes in its service charges and tariffs.

After the first 3,000 monthly minutes per line of direct-dialed, long distance voice calling, Lightyear will evaluate whether it can continue to provide the Service to the Customer. If Lightyear determines that it is unable to continue to provide the Service to the Customer, Lightyear will provide written notification that the Customer's service plan is being terminated and an alternative plan will be offered.

Lightyear may from time to time move a Customer to a different service plan if usage or other criteria are not met for the plan to which the Customer has subscribed or is presently enrolled. Lightyear may require, at any time, a deposit based on estimated usage.

**3 CARRIER FREEZE** Customers may choose to apply a PIC freeze, LPIC freeze and/or local freeze to their account to prevent the unauthorized switching of long distance, intraLATA and/or local service by another carrier (a practice known as slamming). Customers must specifically request a freeze for each Service; it is not done automatically. By checking this option, your long distance, intraLATA and/or local carrier selection will not be switched without your verbal or written authorization. Customer may lift the Carrier Freeze by either calling or writing to Lightyear.

**4 INTRALATA** IntraLATA phone calls go beyond your local calling area, but remain within the region where the call originates. Depending on your location, you may have the opportunity to choose between a local service provider and a long distance carrier for your intraLATA phone service.

**5 LIABILITY** Customer acknowledges that Lightyear is not liable to Customer or any third party for calls not completed due to natural disaster, fire, accidents or circumstances beyond its control.

The Customer acknowledges responsibility for all costs, charges, and expenses that are incurred as a result of the loss, theft, misuse or abuse of the service or calling cards acquired from Lightyear, including all actual and consequential damages.

Lightyear is not liable for any act or omission of any other company or companies furnishing a portion of any service to Customer and shall be indemnified and held harmless by the Customer against all claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade-name, or service mark arising out of the material, data, information, or other content transmitted over Lightyear's carrier's facilities.

Lightyear is not liable for any acts or claims made by independent authorized Agents (or any representatives of such Agents) unless they are expressly approved by an officer of Lightyear in writing or contained in a document provided by Lightyear to the Agent or Customer.

The liability of Lightyear for any claim or loss, expense or damage (including indirect, special, or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this Agreement shall not exceed an amount equivalent to the proportionate charges to the Customer for the period of service or the facility provided during which such interruption, delay, error, omission, or defect occurs.

Lightyear shall not be liable for any claim or loss, expense, or damage (including indirect, special, or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility, or transmission provided under this Agreement, if caused by any person or entity other than Lightyear, by any malfunction of any service or facility provided by any other carrier, by any act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond Lightyear's direct control.

UNLESS PROHIBITED UNDER APPLICABLE LAW, Lightyear MAKES NO WARRANTIES EXPRESS OR IMPLIED, EXCEPT AS STATED IN THIS AGREEMENT. Lightyear's LIABILITY TO CUSTOMER SHALL BE LIMITED AS SET FORTH IN ITS TARIFF AND THIS AGREEMENT.

**6 TERMINATION** This Agreement may be terminated by Customer after 30 days written notice. In the event Customer has signed a term agreement, Customer may be liable to Lightyear for certain damages for early termination.

Termination, to be effective, requires payment in full of all outstanding charges and 30 days written notice to the designated address.

**7 CANCELLATION** Lightyear may discontinue service or cancel an Application for Service without notice (other than as required by law) without incurring any liability for any of the following reasons:

- a Non-payment of any sum due to Lightyear for service,
- b A violation of any law, rule or regulation of any governing authority having jurisdiction over the service,
- c By order of a court or other governmental or quasi-governmental authority having such jurisdiction,
- d In the event service charges exceed the amount of any deposit that Lightyear may have required, and/or
- e The Customer provides false or misleading credit or usage information.
- f The Customer uses the Services for non-residential purposes.
- g The Customer uses the Services to continuously access the Internet.
- h The Customer resells the Services in any way to another person, persons or entity or entities.

**8 MISCELLANEOUS** To the extent permitted by law and applicable tariffs, the Agreement shall be governed by and construed in accordance with the substantive and procedural laws and practices of the State of Kentucky but not its conflict laws, and venue of any action or suit under this Agreement shall be in any Court servicing Jefferson County Kentucky, and Customer shall be subject to the personal jurisdiction of the State of Kentucky. If a dispute arises and Lightyear refers the Agreement to an attorney for collection, Customer agrees to pay all costs of collection including interest, court costs, fees, and reasonable attorneys' fees.

Although if necessary Lightyear will assist Customer in obtaining the necessary facilities from the local telephone company by which to use Lightyear service, Customer is responsible for such activity and is liable for any and all charges incurred therefore.

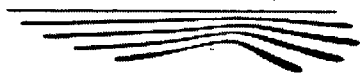
If a Customer has undisputed past-due charges, the Company reserves the right not to honor the Customer's request for a change in toll free service to another carrier (i.e. "porting" of the toll free number), including a request for a Responsible Organization (RespOrg), until such charges are paid full.

**9 ENTIRE AGREEMENT** This Agreement constitutes the entire Agreement and understanding between Customer and Lightyear.

**10 TARIFFS** This Agreement and the services provided hereunder are subject to Lightyear's tariffs in effect from time to time.



# LIGHTYEAR



## TERMS AND CONDITIONS

Customer agrees to pay for, and Lightyear Communications, Inc. ("Lightyear") agrees to provide, long distance service pursuant to the following

### 1. BILLING

Services are provided and invoices are issued on a monthly basis. Invoices shall be payable in full on the last day of the month in which the invoice is rendered except for amounts that are agreed to by Lightyear as valid disputes of Customer. Customer is responsible for paying entire billing invoice excluding disputed charges that have been identified in writing to Lightyear.

Customer shall notify Lightyear within 15 days of receipt of billing invoice of any dispute with regard to the invoice, or said invoice shall be deemed to be correct and binding.

Interest on all unpaid balance at the lesser of 1 5% per month or the highest lawful rate may be applied to the outstanding balance until paid in full and current. In addition, invoices not paid by the due date will not be eligible for any volume and term discounts which may otherwise be available, and Customer may be disconnected.

### 2. SERVICES AND RATES

Lightyear may revise the rates for services from time to time without prior notice to reflect changes in its service charges and tariffs.

Lightyear may from time to time move a Customer to a different service plan if usage or other criteria are not met for the plan to which the Customer has subscribed or is presently enrolled. Lightyear may require, at any time, a deposit based on estimated usage.

### 3. LIABILITY

Customer acknowledges that Lightyear is not liable to Customer or any third party for calls not completed due to natural disaster, fire, accidents or circumstances beyond its control.

The Customer acknowledges responsibility for all costs, charges, and expenses that are incurred as a result of the loss, theft, misuse or abuse of the service or calling cards acquired from Lightyear, including all actual and consequential damages.

Lightyear is not liable for any act or omission of any other company or companies furnishing a portion of any service to Customer and shall be indemnified and held harmless by the Customer against all claims for libel, slander, infringement of copyright or unauthorized use of any trademark, tradename, or service mark arising out of the material, data, information, or other content transmitted over Lightyear's long distance carrier's facilities.

Lightyear is not liable for any acts or claims made by independent authorized Agents (or any representatives of such Agents) unless they are expressly approved by an officer of Lightyear in writing or contained in a document provided by Lightyear to the Agent or Customer.

The liability of Lightyear for any claim or loss, expense or damage (including indirect, special, or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this Agreement shall not exceed an amount equivalent to the proportionate charges to the Customer for the period of service or the facility provided during which such interruption, delay, error, omission, or defect occurs.

Lightyear shall not be liable for any claim or loss, expense, or damage (including indirect, special, or consequential damage) for any interruption, delay, error, omission, or defect in any service, facility, or transmission provided under this Agreement, if caused by any person or entity other than Lightyear, by any malfunction of any service or facility provided by any other carrier, by any act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond Lightyear's direct control.

UNLESS PROHIBITED UNDER APPLICABLE LAW, Lightyear MAKES NO WARRANTIES EXPRESS OR IMPLIED, EXCEPT AS STATED IN THIS

AGREEMENT. LIGHTYEAR'S LIABILITY TO CUSTOMER SHALL BE LIMITED AS SET FORTH IN ITS TARIFF AND THIS AGREEMENT.

### 4. TERMINATION

This Agreement may be terminated by Customer after 30 days written notice. In the event Customer has signed a term agreement, Customer may be liable to Lightyear for certain damages for early termination.

Termination, to be effective, requires payment in full of all outstanding charges and 30 days written notice to the designated address.

### 5. CANCELLATION

Lightyear may discontinue service or cancel an Application for Service without notice (other than as required by law) without incurring any liability for any of the following reasons:

- a Non-payment of any sum due to Lightyear for service,
- b A violation of any law, rule or regulation of any governing authority having jurisdiction over the service,
- c By order of a court or other governmental or quasi-governmental authority having such jurisdiction,
- d In the event service charges exceed the amount of any deposit that Lightyear may have required, and/or
- e The Customer provides false or misleading credit or usage information.

### 6. MISCELLANEOUS

To the extent permitted by law and applicable tariffs, the Agreement shall be governed by and construed in accordance with the substantive and procedural laws and practices of the State of Kentucky but not its conflict laws, and venue of any action or suit under this Agreement shall be in any Court servicing Jefferson County Kentucky, and Customer shall be subject to the personal jurisdiction of the State of Kentucky. If a dispute arises and Lightyear refers the Agreement to an attorney for collection, Customer agrees to pay all costs of collection including interest, court costs, fees, and reasonable attorneys' fees.

Although if necessary Lightyear will assist Customer in obtaining the necessary facilities from the local telephone company by which to use Lightyear service, Customer is responsible for such activity and is liable for any and all charges incurred therefore.

If a Customer has undisputed past-due charges, the Company reserves the right not to honor the Customer's request for a change in toll free service to another carrier (i.e. "porting" of the toll free number), including a request for a Responsible Organization (RespOrg), until such charges are paid full.

### 7. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding between Customer and Lightyear.

### 8. TARIFFS

This Agreement and the services provided hereunder are subject to Lightyear's tariffs in effect from time to time.

\_\_\_\_\_  
Customer Signature (must match signature on Installation order)

\_\_\_\_\_  
Date

## Lightyear Communications – Terms and Conditions

(Lightyear Communications, Products, and Services)

The following terms and conditions shall apply to the provision and use of the Lightyear products and services (individually a "Service" and collectively the "Services") provided by Lightyear Communications, Inc. ("Lightyear") to the Customer

### I Service and Rates

**a Terms and Conditions** Lightyear will provide Services pursuant to the terms and conditions contained in this agreement (the "Agreement") and subject to the rules governing the Service under the applicable tariffs of Lightyear. The tariffs may be modified from time to time in accordance with law and thereby affect the Service furnished to Customer except that the terms and conditions contained in this Agreement shall supplement, or to the extent inconsistent, supersede the Tariffs' rules and regulations. This agreement is not intended to offer or provide the Service or any element or portion thereof for the purpose of resale of same by Customer or any agent Customer.

**b Service Activation** For Lightyear Service an order is complete and will begin to be processed when all the terms and conditions are authorized by the Customer's signature and accepted by Lightyear's Data Operations Department. Lightyear is committed to the timely provisioning of the request for Services at the prices they have been quoted in return for the Customer's commitment for non-cancellation of the order once the provisioning process begins. The Customer is allowed 3 working days from the date the order is signed to cancel the order at no charge.

**c Change of Service or Rate Plan** Lightyear may revise the rates for Services from time to time upon thirty days written notice to reflect changes in its Service charges and tariffs. Lightyear may also from time to time move the Customer to a different Service plan if usage or other criteria are not met for the plan to which the Customer has subscribed or is presently enrolled. To the extent that any Service change materially affects the Customer, the Customer shall have thirty days after the receipt of notice of such change to terminate this Agreement without penalty.

### II Payment and Billing Policies

**a General** Lightyear will bill the Customer in advance for all Monthly Recurring Charges (MRC's) and all non-recurring charges, including any applicable installation charges related to the Service, in the applicable billing cycle. All metered usage is billed the following month for which it was incurred. Customer will pay all invoices within 30 days after the invoice date and shall send its payments to the address specified on the invoice. If Customer in good faith disputes any charges, they shall timely pay all undisputed charges and also within 30 days of the invoice date give Lightyear written notice of the disputed amount(s) and reason(s). Lightyear shall review any such notice promptly. If Lightyear determines that the amount was billed in error, a credit for the amount billed incorrectly will be applied accordingly to the next invoice. If Lightyear determines that the amount was billed correctly, Customer shall pay such amount within 10 days of the date of written notice thereof by Lightyear. Lightyear may, in addition to any other remedies available to it, impose a late payment charge of 1.5% per month on any invoice not paid within such 30 day or to the extent applicable, 10-day period.

**b Billing Start Date** The monthly recurring charges for data products Point to Point, Frame Relay, and Internet, and dedicated access products, DS0, DS1 and DS3, will begin billing 48 hours from the date the circuit tests positive and is released by the carrier. Lightyear reserves the right to bill Customer for charges incurred in previous months.

### III Credit Approval

**Credit Review** This Agreement and Lightyear's provision of Service hereunder are subject to approval by Lightyear pending completion of its credit review procedures. Customer authorizes Lightyear to seek such details concerning its, and its owners' and principals' credit backgrounds, as Lightyear deems necessary. Customer's account may be subject to a credit limit and, where applicable, Lightyear may require remittance of any amount in excess of such limit within 24 hours of confirmed facsimile notice or receipt of other actual notice by Customer.

### IV Term of Agreement

**a Length of Term** The Lightyear Services shall be provided for a term from 12 months to 60 months (as selected by Customer on page 8) commencing on the circuit release date, unless sooner terminated as provided herein. The term of all locations shall be co-terminus and each location shall have a term of no less than 12 months. No location may be added with less than 12 months remaining in the term. Upon expiration, the term shall be extended automatically on a month-to-month basis, unless and until either party gives the other no less than 30 days' prior written notice of termination.

**b Replacement of Current Agreements** This Agreement can be superseded with a subsequent term or volume agreement with Lightyear that is at least greater than the term or volume of the current agreement and covers the same Customer locations as in the previous agreement. The agreement commences on the date that either the new agreement is received and accepted by Lightyear, or the certified carrier circuit release date, whichever comes first.

**c Technology Clause** Lightyear agrees to provide the Customer with the latest telecommunications technology and allow Customers to migrate to a newer technology Service offering without a discontinuance of Service penalty so long as the Customer remains with Lightyear and subsequently signs a new term/volume plan that is equal to or greater than its replacement as denoted above. Set up charges, administrative fees or change of Service charges may apply.

### V Termination, Cancellation and Change Policies

**a Customer Notification on Cancellation of Service** All cancellation notices must be received prior to circuit release date and transmitted in writing clearly indicating: i) The Customer and location for which cancellation is being requested, ii) The authorized signature of the Customer, iii) Identification of Services to be cancelled. Lightyear will consider the date this notification was received by Lightyear's Data Operations as the cancellation date and use this for the basis for any potential termination charges.

**b Order Cancellation Charges** Lightyear reserves the right to charge a cancellation fee if the Customer cancels the Service order prior to the circuit release date. The rate for this charge shall not exceed \$150 per workday per location and per product as defined on the product summary worksheet and begins on the day the order was received. Services cancelled after Service has been tested and released to Customer will be charged according to the term agreement.

**c Partial Order Cancellation** Canceling any part of an order constitutes canceling the entire order and re-submitting that portion which is desired. Change orders will be charged according to tariff. A request involving changes to an existing Service or additions to those Services must be repriced based on current rates and fees at the time of the request.

Initials \_\_\_\_\_

Lightyear Communications  
Version 1.7 – May 9, 2002

1 of 8 pages

**d Change** Any change requested after the order is submitted to the Lightyear data operations technician to provision will result in additional charges according to tariff. A request involving changes to an existing Service or additions to those Services must be requested based on current rates and fees at the time of the request.

**e Service Move Requests** Physically moving Services from one site to another regardless of the distance requires a quoting of the Services being moved. Adding additional Services to pre-existing Service constitutes a price quote. Standard Installation, and Set-up fee may apply unless a new agreement is instituted in its place as denoted in section 4.

**f Customer Terminations** All terminations of Lightyear Service after the circuit release date must be received by Lightyear in writing. In the event Customer has signed a term agreement, Customer may be liable to Lightyear for certain damages for early termination and therefore penalties may apply. Termination, to be effective, requires payment in full of all outstanding charges and 30 days written notice to the designated address. Customer charges will be stopped 30 days from the date Lightyear receives the termination request.

**g Lightyear Termination** Lightyear may terminate this Agreement, or any Service Order, in whole or in part, or suspend the Service at any time upon written notice of: i) Any failure of Customer to pay any undisputed amounts due hereunder (which includes amounts disputed not in good faith), ii) Any material breach by Customer of any provision of this Agreement or any Service Order, iii) Any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver, or similar event with respect to Customer, iv) Lightyear's determination, in its sole discretion, that provision of the Service hereunder is or will be harmful, hazardous or capable of causing interference or Service interruptions to the Lightyear Network, equipment or Service, including, but not limited to, economic and/or safety requirements, v) Any governmental prohibition concerning the provision of, or any required alteration of, the Service provided hereunder or any violation of applicable law, rule or regulation resulting from the Service, vi) Non-payment of any sum due to Lightyear for Service provided, vii) A violation of any law, rule or regulation of any governing authority having jurisdiction over the Service provided, viii) By order of a court or other governmental or quasi-governmental authority having such jurisdiction, ix) In the event Service charges exceed that amount of any deposit that Lightyear may have required, x) The Customer provides false or misleading credit or usage information. No such termination shall relieve Customer of its obligations under this agreement, or any Service Order, including, without limitation, the obligation to make payments for the Service provided prior to termination.

**h Termination Rights** The rights and obligations of the parties (except with respect to the provision of Service by Lightyear) shall survive any such termination or other cancellation or expiration of this Agreement or any Service Order. In event Customer cancels or terminates this Agreement or any Service Order prior to the expiration of the then-current term, Customer agrees to pay Lightyear a termination charge (as liquidated damages and not as a penalty) as follows: i) All non-recurring charges specified in this Agreement or any Service Order (including previously waived charges), ii) All disconnection, early cancellation or termination charges reasonably incurred by Lightyear on Customer's behalf, iii) To the extent applicable all recurring charges specified for the balance of the first year, 50% of the recurring charges for the second year and 25% of the recurring charges for the remaining term. All termination charges shall be due and payable within 30 days of the effective date of termination.

## VI Business Downturn

**a Definition** In the event of a business downturn beyond Customer's control or a divestiture of an Affiliate of Customer that significantly reduces the volume of network services required by the Customer with the result the Customer will be unable to meet its revenue and/or volume commitments under this Agreement (notwithstanding Customer's best efforts to avoid such a shortfall), Lightyear and Customer will cooperate in efforts to develop a mutually agreeable alternative agreement that will satisfy the concern of both parties and comply with all applicable legal and regulatory requirements ("Alternative Agreement"). By way of example and not limitation, such alternative agreements may include changes in rates, nonrecurring charges, revenue and/or volume commitments, discounts, the multi-year services period and other provisions. Subject to all applicable legal and regulatory requirements, including the requirements of the Federal Communications Commission and the Communications Act of 1934 (as revised and amended) Lightyear will prepare and file any tariff revisions necessary to implement such mutually agreeable alternative agreement. This provision shall not apply to change resulting from a decision by Customer to: i) reduce its overall use of telecommunications or ii) transfer portions of its traffic or projected growth to carriers other than Lightyear.

**b Notification** The Customer must give Lightyear (60) day prior written notice of the conditions it believes will require the application of this provision. Lightyear agrees to waive monthly commitment for no longer than (60) days during such time as Lightyear and Customer negotiate and execute the Alternative Agreement.

**VII Interruption of Service Policy** In the event of an interruption in the Service ("Outage") as defined in this section, Customer shall be entitled to a credit in an amount equivalent to the proportionate monthly charge for the period during which such Outage occurs. An Outage will be deemed to have occurred only if the Service becomes unusable to Customer as a result of failure of Lightyear's facilities, equipment or personnel to provide the Service, and only where the interruption is not the result of the following:

- i The fault or negligence of the Customer
- ii The failure of interconnection facilities or other equipment not part of the Lightyear facilities or within Lightyear's control
- iii Any planned interruption or routine maintenance
- iv Other circumstances beyond the control of Lightyear

Credit allowance for an Outage commences upon the earlier of: (a) Lightyear's receipt of written notice from the Customer of an Outage, (b) Lightyear's actual knowledge of such Outage, and the credit allowance ceases when the Service has been restored and Lightyear has attempted to notify the Customer thereof. Credits as a result of an Outage shall be given only when Customer notifies Lightyear that such credit is due at the current rates provided to the Customer. Only that portion of the Service which is interrupted due to the Outage shall be credited. The Service is offered 24 hours per day, 7 days a week. For purposes of credit computation, every month shall be considered to have 720 hours. No credit shall be allowed for an Outage of less than 30 minutes. Lightyear is not responsible for Customer's vendor or cost thereof for service calls, trip charges, materials etc, unless approved in writing in advance of the occurrence by an officer of Lightyear.

## VIII Indemnification Policy

Each party shall indemnify and hold the other harmless from and against bodily injury (including death) or damage to tangible personal property caused by the negligence or willful misconduct of the indemnifying party or its employees, agents or invitees in connection with this Agreement.

## IX Excusable Delay or Failure

Neither party will be in default or otherwise liable for any delay in or failure of its performance hereunder due to any act of god, adverse weather condition, fire, flood, riot, strike, accident, war, governmental requirement, inability to secure materials, labor or transportation, cable cut or other cause beyond the reasonable control of the affected party. Any such delay or failure shall suspend the agreement or any Service Order until the delay or failure ceases, and the period of the Agreement or Service Order shall be extended accordingly.

## X Content and Prohibited Uses of the Service

**a Responsibility for Content** Customer should be aware that there may be some content on the Internet or otherwise available through the Service which may be offensive to some individuals, or which may not be in compliance with all local laws, regulations and other rules. For example, it is possible to obtain access to content which is pornographic or offensive, particularly for children. Lightyear assumes no responsibility for the content contained on the Internet or otherwise available through the Service. All content accessed by the Customer through the Service is accessed and used by the Customer at Customer's own risk and Lightyear shall not have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content by Customer. Content questions or complaints should be addressed to the content provider.

**b Posting of Content** Lightyear has no obligation to monitor transmissions made on the Service. However, Customer acknowledges and agrees that Lightyear has the right to monitor such transmissions from time to time and to disclose the same as required to satisfy any law, regulation or other governmental request to operate the Service properly. Lightyear reserves the right to remove any information or materials, in whole or in part, that, in its sole discretion are unacceptable, undesirable or in violation of this Agreement.

**c Prohibited Uses of the Service** Customer shall not use the Lightyear Service to, directly or indirectly

- i for any unlawful purposes. Use of the Lightyear Service for the transmission or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited. This includes, but is not limited to, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or which infringes the intellectual property of any person,
- ii post, transmit or disseminate objectionable information, including with limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, federal or international law, order or regulations,
- iii access any other person's computer, software, or data of any person, without knowledge and consent of such person,
- iv upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information software, or other material obtained through the Service which is protected by copyright or other proprietary right, without obtaining permission of the owner,
- v knowingly disrupt the Service,
- vi resell the Service or otherwise charge others to use the Service. The Service is for personal use only and Customer agrees not to use the Service for operation as an Internet Service Provider or for any other business enterprise in competition with the Service,
- vii use the Service to send unsolicited advertising, promotional material, or other forms of solicitations (i.e. "spamming") to any other users of the Service or users of any other Internet access services. Lightyear reserves the right to block or filter mass solicitations on or through Service.

**d** Lightyear is not responsible for any incidental or consequential damages user may suffer, including but not limited to, loss of data resulting from delays, non-delivers, mis-deliveries, or Service interruptions. Use of any information obtained via the Service is at User's own risk.

**e** User is responsible for all activity in User's account and confidentiality of User's passwords. Lightyear will suspend access or change access to User's account within twenty-four (24) hours after notification by the User when the User's password has been lost, stolen or otherwise compromised.

**f** Lightyear is not responsible for User's files residing on Lightyear equipment. User is solely responsible for independent backup of User's files. Any and all files must be removed by the User within 30 days after termination of Service with Lightyear. Any files remaining after the 30-day grace period will be deleted and unrecoverable.

## XI Miscellaneous

**a Lightyear Assistance on Customer Provided Local Access** The Customer is responsible for such activity and is liable for any and all charges incurred therefore.

**b Release of 800 Number** If the Customer has undisputed past-due charges, Lightyear reserves the right not to honor the Customer's request for a change in toll free service to another carrier (i.e. "porting" of the toll free number), including a request for a Responsible Organization (RespOrg), until such charges are paid in full.

**c Lightyear and Third Party Responsibility** From time to time Lightyear will suggest and help facilitate contact with third party resources in order to accommodate the type of Services that are requested. This transaction shall be the sole responsibility of the Customer and that third party.

**d Contact Address** For inquiries or notices in connection with this Agreement, the Customer should contact Lightyear in writing to Lightyear Communications, Attn: Legal Department, 1901 Eastpoint Parkway, Louisville, KY 40223.

**e Time Is Of The Essence** Lightyear will use its best efforts to provide the Services ordered on or before the requested dates, yet there is no delivery guarantee due to interfacing with multiple vendors. The Customer will be notified of delivery milestones and potential delays if applicable. In any case the Customer must be prepared for installation when notified of the circuit being tested and released.

**f Minimum Usage** Lightyear reserves the right to assess an underutilization charge on a per (VGE DS-0) voice port (channel) basis up to \$75 if the Customer does not meet the Minimum Usage Requirements for that Service. Minimum Usage Requirements are calculated based on voice service only; integrated access contributions such as Internet Protocol (IP), Frame Relay and Private Line service are not counted towards minimum usage calculations, only those DS-0s enabled for voice service. Customers should not enable voice service on integrated access circuits until such time voice service is intended to be used by Customer. Lightyear will monitor Customer voice circuits for Minimum Usage Requirements and will notify Customer 30-days in advance of the intent to start charging a penalty (not retroactively) if usage is not increased to the minimums. For those customers whose installation charges were waived in return for a term agreement and voice usage is under the Minimum Usage Requirement, all obligations pursuant to the original agreement will apply, including early cancellation penalties. For customers whose original term has expired and signs a new or extended term for the pre-existing circuit (not new circuits), Lightyear will not charge an early cancellation penalty should the Customer decide to leave due to the Minimum Usage Requirement.

**g Interexchange connectivity** Unless stated in writing otherwise as an attachment to these terms and conditions, Lightyear will provide the inter-exchange connectivity (IXC) of the requested Services and local access (Lightyear ordered loop) to a pre-designated location, as defined by local access tariff, to the established and stated locale in this order to the Customer's premise. Inside wiring and equipment connectivity is the Customer's responsibility.

**h Good Faith Installation** Lightyear off site technicians and Customer on site technicians and/or vendor representatives will cooperate in good faith on establishing expedient and timely installation of Service. Lightyear will not charge the Customer for additional hours, trip charges, overtime or other miscellaneous expenses incurred due to delays incurred at the Customer site directly related to Lightyear. Likewise, Customer agrees that Lightyear will not be liable for any additional expenses caused by delays directly related to the Customer.

**i Assignment** Customer may not assign this Agreement without the prior written consent of Lightyear, which consent may be conditioned upon such assurances of performance and ability to pay which Lightyear may reasonably require.

**j Liability and Warranties** Except as expressly set forth in this Agreement, Lightyear makes no warranties, representations or other agreements, expressed or implied, with respect to the Service, including, without limitation, implied warranties of merchantability or fitness for a particular purpose. In no event shall Lightyear be liable for special, incidental, consequential, indirect or punitive damages, including, but not limited to, loss of revenue or profit, loss of use of any property, cost of substitute equipment or services, downtime costs and claims of the Customer for damages. Except with respect to Section 8, Lightyear's entire liability for any claim, loss, expense or damage under this Agreement or any Service Order shall in no event exceed sums actually paid by Customer to Lightyear for the Service which gives rise to the claim.

**k Entire Agreement** The terms of the Agreement constitute the entire agreements between the parties concerning the subject matter hereof, and this agreement may be modified only in a writing signed by both parties. **Verbal commitments, modifications to this agreement, or representations either stated or implied, unless made as part of this agreement in writing and accepted by Lightyear, are considered null and void and not part of this, or any other agreement between Customer and Lightyear.** This agreement shall also cover multiple products and/or locations.

**l Jurisdiction** To the extent permitted by law and applicable tariffs, the Agreement shall be governed by and construed in accordance with the substantive and procedural laws and practices of the State of Kentucky but not its conflict laws, and venue of any action or suit under this Agreement shall be in any Court servicing Jefferson County, Kentucky, and Customer shall be subject to the personal jurisdiction of the State of Kentucky. If a dispute arises and Lightyear refers the Agreement to an attorney for collection, Customer agrees to pay all costs of collection including interest, court costs, fees, and reasonable attorneys' fees upon a finding adverse to the Customer.

**m Notice** Except as provided in Section 2 above, any notice given or made pursuant to this Agreement or any Service Order will be effective only if in writing and delivered in person, by messenger, by overnight delivery service or by certified mail, return receipt requested, and delivered at the address provide herein, or such other address as may hereafter be furnished by either party to the other.

**n Severability** Each provision of the Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in effect.

**o Waiver** Failure by a party to enforce any provision of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver of rights.

**p Installation** Installations should be scheduled within normal business hours (Monday through Friday, 8:00 a.m. – 6:00 p.m.). After-hours installations will incur additional charges. Lightyear reserves the right to charge a fee of up to \$1000 per circuit location for order expedites. Expedites offer no guarantee of an earlier installation date, variables such as facilities, carriers and network availability are determining factors.